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June 5, 2024

Via CM/ECF

Molly Dwyer, Clerk of the Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Oregon Wild v. U.S. Forest Service*, No. 23-35579

Federal Defendants file this letter pursuant to Fed. R. App. P. 28(j), in response to Plaintiffs' June 3 letter. *See* Doc. No. 45-1. Contrary to Plaintiffs' assertions, *Friends of the Inyo v. U.S. Forest Service*, No. 23-15492, is far afield from the issues presented in this case.

In *Friends of the Inyo*, this Court held that 36 C.F.R. § 220.6 prohibits "combining two" Categorical Exclusions ("CE"), "when neither CE would cover a proposed action alone." 2024 WL 2281568, *5. But here, Plaintiffs challenge the Forest Service's approval of three critical forest restoration projects under a single CE, 36 C.F.R. § 220.6(e)(6), known as "CE-6." Plaintiffs' reliance on *Friends of the Inyo* is misplaced given that the holding of *Friends of the Inyo* is limited to the combination of multiple CEs under 36 C.F.R. § 220.6 when neither CE would cover a project alone, whereas here Plaintiffs challenge the Forest Service's approval of projects under a *single* CE. Even Plaintiffs admit that *Friends of the Inyo* "presents different legal questions" than those before the Court in this appeal. *See* Doc. No. 45-1, at 1.

Sincerely,

s/ Benjamin W. Richmond
Benjamin W. Richmond
Counsel for Federal Defendants

Cc: Counsel of Record (via CM/ECF)

CERTIFICATE OF COMPLIANCE

I certify that, in accordance with Fed. R. App. P. 28(j), the body of the foregoing letter contains 183 words, as recorded by the word count of the Microsoft Word processing system used to prepare the brief.

s/ *Benjamin W. Richmond*

Benjamin W. Richmond
Counsel for Federal Defendants